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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,972	02/19/2004	Glen Johnson	14298.1USU1	1050
23552	7590	08/09/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			BATSON, VICTOR D	
			ART UNIT	PAPER NUMBER
			3671	
DATE MAILED: 08/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,972

Applicant(s)

GLEN JOHNSON

Examiner

Victor Batson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892).
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/24/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Drawings

Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

The informal drawings are not of sufficient quality to permit examination. Accordingly, replacement drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to this Office action. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

Applicant is given a TWO MONTH time period to submit new drawings in compliance with 37 CFR 1.81. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a). Failure to timely submit replacement drawing sheets will result in ABANDONMENT of the application.

Claim Objections

Claim 27 is objected to because of the following informalities: In claim 27 line 2, it appears that "side blade" should be changed to "side blades". Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4,5,6,10,11,12,15,18,26,27,28 are rejected under 35 U.S.C. 102(b) as being anticipated by Bourgeois, Jr. (4,655,297).

Bourgeois, Jr. discloses a grading implement including a main body (considered the frame including members 54,30,32,34,36), a front plow blade 70, side blades 12 & 14, and a cavity located beneath the main body and positioned behind the front plow blade. Bourgeois, Jr. further discloses a rear blade 68, a top wall (considered the combination of lips 16 & 18) and an adapter (considered the hitch). Concerning claim 26, members 34 & 36 are considered an upright rear wall. Concerning claim 28, blade 70 is considered a claw blade.

Claims 1,2,6,10,12,13,15 are rejected under 35 U.S.C. 102(b) as being anticipated by Holub (4,044,843).

Holub discloses a grading implement including a main body (considered the mounting structure including members 14,71,72), a front plow blade 53, side blades 16 & 18, and a cavity located beneath the main body and positioned behind the front plow blade. Holub further discloses a rear blade 54 with a cutting edge 55.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7,8,9,13,14,19,20,21,22,23,24,25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bourgeois, Jr. (4,655,297).

Bourgeois, Jr. discloses a grading implement as described previously, but lacks specifying its dimensions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the implement with the claimed dimensions since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art (see MPEP 2144.05).

Concerning the claims directed to the shape of the channel members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the channel members with the claimed shapes since it has been held that "There is no invention in merely changing the shape or form of an article without

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changing its function except in a design patent." *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

Claims 7,8,9,14,19,20,21,22,23,24,25,27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holub (4,044,843).

Holub discloses a grading implement as described previously, but lacks specifying its dimensions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the implement with the claimed dimensions since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art (see MPEP 2144.05).

Concerning the claims directed to the shape of the channel members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the channel members with the claimed shapes since it has been held that "There is no invention in merely changing the shape or form of an article without changing its function except in a design patent." *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

Claims 3,16,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bourgeois, Jr. (4,655,297) in view of Hermonson (6,283,225).

Bourgeois, Jr. discloses a grading implement as described previously, but lacks using hollow extensions sized to receive tines.

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Hermanson teaches that it is known in the art for a grading blade to include hollow extensions sized to receive tines to allow the blade to be used with a vehicle such as a skid steer loader (figure 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the grading implement of Bourgeois, Jr. with hollow extensions so that the grading implement could be used with various vehicles such as a skid steer vehicle as taught by Hermanson.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (571) 272-6987. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 7, 2005



Victor Batson
Primary Examiner
Art Unit 3671